

# Employment & Industrial Case Note

July 2007

## ***Termination of Employment - Genuine Operational Reasons - Argument Successful.***

### ***Gillian Margaret Daly and Beleyre Holdings Pty Ltd T/AS Beleyre Tavern***

This is a decision of the Australian Industrial Relations Commission – McCarthy Deputy President delivered in Perth on 5 July 2007.

The decision related to the termination of employment of the applicant Gillian Daly from her employment with the Beleyre Tavern. The Commission looked at the argument of the employer that the termination was for genuine operational reasons and pursuant to s.643(8) of the *Workplace Relations Act* there was no jurisdiction in the Federal Commission to deal with the matter.

This argument by the employer hotel was successful. The position taken by the employer was that due to legislative change in Western Australia it was required to have an approved Manager on duty on the premises during all opening hours. The applicant Ms Daly was not an approved Manager. Ms Daly had worked at the Hotel for some time in the bar during daytime hours by herself.

Upon review of the legislative change the employer decided that it needed to have two approved Managers in order for the Hotel to be manned at all times by an approved Manager and that Ms Daly was not a suitable person to be appointed an approved Manager and therefore there was a surplus of employees for coverage during daytime hours and as a result her employment was terminated.

The employee Ms Daly alleged that there were other reasons for termination related to her employment being one to do with image in that she did not suit the image the Hotel was trying to create. The employee Ms Daly refused to attend a meeting offered by the employer to explain what was the position under the Legislation and why decisions were being taken in respect of her employment.

The Commissioner found that due to operational reasons and in particular the legislative changes the defence was available to the employer and that there was no jurisdiction in the Commission to hear the matter. The Application for the termination being harsh, unjust or unreasonable was dismissed. The employee had also lodged an Application on the grounds that the termination was for a prohibited reason and that matter was listed for a conciliation conference.

#### **Comment**

A successful argument by an employer that employment was terminated due to operational reasons. Interestingly the decision

did not go into detail as to what exactly the legislative changes were and an examination of those legislative changes by the Commission as it related to what was required by the legislative change. Further there was no examination in detail as to the process the employer undertook for review of the positions of a bar attendant and approved Manager and why the decision was taken that the employee was not suitable for an approved Manager's position. Although a detailed examination would not be required a comment perhaps could have been made as to the reasons arrived at by the employer that is requiring an examination of the evidence of the employer as presented.

However given that there was legislative change the employer was on strong grounds for its argument.

For information concerning termination of employment and genuine operational reasons please do not hesitate to contact our Employment & Industrial Team.

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